

To: Daniel Jorjani[daniel.jorjani@sol.doi.gov]
Cc: Edward Keable[edward.keable@sol.doi.gov]; Timothy Murphy[Timothy.Murphy@sol.doi.gov]
From: Tucker, Kaprice
Sent: 2017-10-04T12:36:35-04:00
Importance: Normal
Subject: Re: Another Paragraph to Review in the FOIA Case Involving National Monuments
Received: 2017-10-04T12:36:45-04:00
Redline 1st Amended Complaint (1).pdf
17-00540qa.pdf

Dan,

Attached is a copy of the revised complaint that recites the relevant FOIA request. A copy of the original FOIA request is also attached. The revised complaint alleges as follows:

42. On May 8, 2017, the Center [for Biological Diversity] sent a request for records to the Interior Department, also pursuant to FOIA, seeking "[a]ll records ... that mention, include, or reference national monument designations made by any President of the United States since January 1, 1966," and "[a]ll records mentioning, including, or referencing [Exec. Order 13792]" from January 20, 2017 to the date of the search for responsive records.

(b)(5) AWP, (b) (5) - DPP



(b)(5) AWP

A horizontal black redaction bar consisting of three thick lines. To its left, the text "(b)(5) AWP" is written in red.Two groups of black redaction bars. The first group contains three horizontal lines, with the middle one being the longest. The second group contains four horizontal lines, with the top two being the longest.



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

May 8, 2017

VIA ELECTRONIC MAIL

Clarice Julka, FOIA Officer
 U.S. Department of Interior
 MS-7328, MIB
 1849 C Street, NW
 Washington, DC 20240
os_foia@ios.doi.gov

Re: Freedom of Information Act Request: Review of National Monument Designations

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

The Center requests the following records from the U.S. Department of the Interior (“Interior Department”):

1. All records from January 20, 2017 to the date of this search that mention, include, or reference national monument designations made by any President of the United States since January 1, 1996 (*See Attachment A. State by State Monuments List*); and
2. All records mentioning, including, or referencing Exec. Order No. 13792, 82 F.R. 20429 (Apr. 26, 2017), “Review of Designations Under the Antiquities Act” (*See Attachment B. Presidential Executive Order on the Review of Designations Under the Antiquities Act*).

For this request, the term “all records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, telephone logs, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

Finally, FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records." See 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times." 5 U.S.C. § 552(a)(2)(D)(ii)(II). Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.,* 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a

person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

“Readily accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B). We ask that you please provide all records in an electronic format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or Excel spreadsheet, or; (2) for files that are in .PDF format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA’s fee waiver requirement is “liberally construed.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA’s fee waiver provision was intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and *non-profit public interest groups.*” *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, “[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information” 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Interior Department FOIA regulations at 43 C.F.R. § 2.48(a)(1)-(4) establish the same standard.

Thus, the Interior Department must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or

activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 43 C.F.R. § 2.48(a)(1)-(4). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the Interior Department. This request asks for: (1) all records from January 20, 2017 to the date of this search that mention, include, or reference national monument designations made by any President of the United States since January 1, 1996 (*See Attachment A*); and (2) all records mentioning, including, or referencing Exec. Order No. 13792, 82 F.R. 20429 (Apr. 26, 2017), “Review of Designations Under the Antiquities Act” (*See Attachment B*).

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey to the public information about how the U.S. government is carrying out congressional mandates under the Antiquities Act, 54 U.S.C. § 320301 - 320303, Federal Land and Policy Management Act, 43 U.S.C. ch. 35 § 1701 (“FLPMA”), and National Forest Management Act, 16 U.S.C. §§ 1600 - 161 (“NFMA”), *inter alia*. This request will reveal how the current administration makes decisions regarding protections of public lands and resources, specifically national monuments. The Center will glean from the records whether evidence exists of correspondence between government agencies and extractive and/or fossil fuel industries, and as such whether the key players in national monument designations have conflicts of interest that are related to seeking the review of national monuments. Once the information is made available, the Center will analyze it and present it to its 1.3 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of the Interior Department operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons’ Understanding of the Review of National Monument Designations

The requested records will contribute to public understanding of how the Interior Department actions are consistent with the Antiquities Act, FLPMA, and NFMA, amongst other relevant

environmental laws. As explained above, the records will contribute to public understanding of this topic.

Designation of national monuments generally, and specifically the current administration’s review of past designations and possible collusion with industries that pose a threat to environmental health are areas of interest to a reasonably broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about what basis federal agencies are utilizing to review national monument designations. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.”).

Through the Center’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), cert. denied, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern national monument designation review that are not currently in the public domain – e.g., in the docket on regulations.gov. *See Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”¹

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of how the government is effectuating congressional mandates under various environmental laws, and how the administration’s decision making takes into account protections to public lands and national monuments. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the basis for review of national monument designations.

¹ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of the basis for review of national monument designations as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about whether the key players in reviewing national monument designations have corresponded with extractive and/or fossil fuel industries, and the adverse impact these potential conflicts of interest would have on environmental health.

The records are also certain to shed light on the Interior Department's compliance with the Antiquities Act, FLPMA, and NFMA, for example. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center's fee waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, and *Los Angeles Times*. Many media outlets have reported on national monuments and public lands utilizing information obtained by the Center from federal agencies including the Interior Department. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.3 million members and supporters. Three times a year, the Center sends printed newsletters to more than 58,016 members. More than 233,000 people have "liked" the

Center on Facebook, and there are regular postings regarding protections of public lands. The Center also regularly tweets to more than 52,200 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the Interior Department's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because “[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity.” *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center’s role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.3 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee waiver. We hope that the Interior Department will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

Attachment A

STATE	DESIGNATION DATE	ACRES
ALABAMA		
Birmingham Civil Rights	Jan. 12, 2017	0.88
Freedom Riders	Jan. 12, 2017	5.96
ARIZONA		
Agua Fria	Jan. 11, 2000	71,100
Grand Canyon-Parashant	Jan. 11, 2000	1,054,264
Ironwood Forest	June 9, 2000	189,731
Vermillion Cliffs	Nov. 9, 2000	294,160
Sonoran Desert	Jan. 17, 2001	496,337
CALIFORNIA		
California Coastal "I"	Jan. 11, 2000	883
Pinnacles "VII"	Jan. 1, 2000	7,900
Giant Sequoia	April 15, 2000	327,769
Carrizo Plain	Jan. 17, 2001	246,048
Fort Ord	April 20, 2012	14,651
César E. Chávez	Oct. 8, 2012	10.50
California Coastal "II"	March 11, 2014	1,600
San Gabriel Mountains	Oct. 10, 2014	346,117
Berryessa Snow Mountain	July 10, 2015	330,780
Castle Mountains	Feb. 12, 2016	20,920
Mojave Trails	Feb. 12, 2016	1,600,000
Sand to Snow	Feb. 12, 2016	154,000
California Coastal "III"	Jan. 12, 2017	6,232
COLORADO		
Canyons of the Ancients	June 9, 2000	182,422
Chimney Rock	Sept. 21, 2012	4,726
Browns Canyon	Feb. 19, 2015	21,586
DELAWARE		
First State	March 25, 2013	1,108
HAWAII		
Honouliuli	Feb. 24, 2015	123
IDAHO		
Craters of the Moon "VI"	Nov. 9, 2000	661,287
Minidoka Internment	Jan. 17, 2001	73

ILLINOIS

Pullman	Feb. 19, 2015	0.24
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MARYLAND

Harriet Tubman-Underground Railroad	March 25, 2013	11,750
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MAINE

Katahdin Woods and Waters	Aug. 23, 2016	87,563
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MONTANA

Pompeys Pillar	Jan. 17, 2001	51
Upper Missouri River Breaks	Jan. 17, 2001	494,451

NEW MEXICO

Kasha-Katuwe Tent Rocks	Jan. 17, 2001	5,394
Rio Grande del Norte	March 25, 2013	242,555
Organ Mountains-Desert Peaks	May 21, 2014	498,815
Browns Canyon	Feb. 19, 2015	21,586

NEVADA

Basin and Range	July 10, 2015	704,000
Gold Butte	Dec. 28, 2016	296,937

NEW YORK

Governors Island	Jan. 19, 2001	22
African Burial Ground	Feb. 27, 2006	0.35
Stonewall	June 24, 2016	0.12

OHIO

Charles Young Buffalo Soldiers	March 25, 2013	59.65
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OREGON

Cascade-Siskiyou	June 9, 2000	52,000
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OREGON/CALIFORNIA

Cascade-Siskiyou National Monument "II"	Jan. 12, 2017	48,000
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SOUTH CAROLINA

Reconstruction Era	Jan. 12, 2017	15.56
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TEXAS

Waco Mammoth	July 10, 2015	7.11
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UTAH

Grand Staircase-Escalante	Sept. 18, 1996	1,885,800
Bears Ears	Dec. 28, 2016	1,350,000

VIRGINIA

Fort Monroe	Nov. 1, 2011	325.21
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VIRGIN ISLANDS

Buck Island Reef "III"	Jan. 17, 2001	18,135
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WASHINGTON

Hanford Reach	June 9, 2000	195,000
San Juan Islands	March 25, 2013	970

WASHINGTON, D.C.

President Lincoln and Soldier's Home	July 7, 2000	2
Belmont-Paul Women's Equality	April 12, 2016	0.34

MARINE MONUMENTS***AMERICAN SAMOA**

Rose Atoll Marine	January 6, 2009	11,400,364
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ATLANTIC OCEAN

Northeast Canyons and Seamounts Marine	Sept. 15, 2016	4,164,002
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GUAM/NORTHERN MARIANAS ISLANDS

Marianas Trench Marine	Jan. 6, 2009	80,700,105
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HAWAII

Papahānaumokuākea Marine	June 15, 2006	118,481,240
Papahānaumokuākea Marine "II"	Aug. 26, 2016	375,278,034

MINOR OUTLYING ISLANDS

Pacific Remote Islands Marine	Jan. 6, 2009	73,641,727
Pacific Remote Islands Marine "II"	Sept. 25, 2014	416,145,936

VIRGIN ISLANDS

Virgin Islands Coral Reef	Jan. 17, 2001	12,708
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TOTAL ACRES

Marine and terrestrial national monuments (acres)	1,091,756,053
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* Marine national monument acreage is based on nautical square miles.

Source: Andy Kerr, The Larch Company

Attachment B

The White House
Office of the Press Secretary
For Immediate Release
April 26, 2017

Presidential Executive Order on the Review of Designations Under the Antiquities Act

EXECUTIVE ORDER

REVIEW OF DESIGNATIONS UNDER THE ANTIQUITIES ACT

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in recognition of the importance of the Nation's wealth of natural resources to American workers and the American economy, it is hereby ordered as follows:

Section 1. Policy. Designations of national monuments under the Antiquities Act of 1906, recently recodified at sections 320301 to 320303 of title 54, United States Code (the "Antiquities Act" or "Act"), have a substantial impact on the management of Federal lands and the use and enjoyment of neighboring lands. Such designations are a means of stewarding America's natural resources, protecting America's natural beauty, and preserving America's historic places.

Monument designations that result from a lack of public outreach and proper coordination with State, tribal, and local officials and other relevant stakeholders may also create barriers to achieving energy independence, restrict public access to and use of Federal lands, burden State, tribal, and local governments, and otherwise curtail economic growth. Designations should be made in accordance with the requirements and original objectives of the Act and appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.

Sec. 2. Review of National Monument Designations. (a) The Secretary of the Interior (Secretary) shall conduct a review of all Presidential designations or expansions of designations under the Antiquities Act made since January 1, 1996, where the designation covers more than 100,000 acres, where the designation after expansion covers more than 100,000 acres, or where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders, to determine whether each designation or expansion conforms to the policy set forth in section 1 of this order. In making those determinations, the Secretary shall consider:

- (i) the requirements and original objectives of the Act, including the Act's requirement that reservations of land not exceed "the smallest area compatible with the proper care and management of the objects to be protected";

- (ii) whether designated lands are appropriately classified under the Act as "historic landmarks, historic and prehistoric structures, [or] other objects of historic or scientific interest";
 - (iii) the effects of a designation on the available uses of designated Federal lands, including consideration of the multiple-use policy of section 102(a)(7) of the Federal Land Policy and Management Act (43 U.S.C. 1701(a)(7)), as well as the effects on the available uses of Federal lands beyond the monument boundaries;
 - (iv) the effects of a designation on the use and enjoyment of non-Federal lands within or beyond monument boundaries;
 - (v) concerns of State, tribal, and local governments affected by a designation, including the economic development and fiscal condition of affected States, tribes, and localities;
 - (vi) the availability of Federal resources to properly manage designated areas; and
 - (vii) such other factors as the Secretary deems appropriate.
- (b) In conducting the review described in subsection (a) of this section, the Secretary shall consult and coordinate with, as appropriate, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the heads of any other executive departments or agencies concerned with areas designated under the Act.
- (c) In conducting the review described in subsection (a) of this section, the Secretary shall, as appropriate, consult and coordinate with the Governors of States affected by monument designations or other relevant officials of affected State, tribal, and local governments.
- (d) Within 45 days of the date of this order, the Secretary shall provide an interim report to the President, through the Director of the Office of Management and Budget, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chairman of the Council on Environmental Quality, summarizing the findings of the review described in subsection (a) of this section with respect to Proclamation 9558 of December 28, 2016 (Establishment of the Bears Ears National Monument), and such other designations as the Secretary determines to be appropriate for inclusion in the interim report. For those designations, the interim report shall include recommendations for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order.
- (e) Within 120 days of the date of this order, the Secretary shall provide a final report to the President, through the Director of the Office of Management and Budget, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chairman of the Council on Environmental Quality, summarizing the findings of the review described in subsection (a) of this section. The final report shall include recommendations for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
April 26, 2017.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,
378 N. Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR,
1849 C. Street, NW
Washington, D.C. 20240,

Defendant.

Case No.: 17 cv 01595 RC

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. In this action, the Center for Biological Diversity (“Center”) – an environmental conservation organization that works to protect native wildlife species and their habitats challenges the failure of the U.S. Department of the Interior (“Interior Department”) to provide Deleted: the communications and schedules of Secretary of the Interior Ryan Zinke, records that reference national monuments designated since 1996, and records that discuss the Interior Department’s review of national monuments, all in violation of the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”), or alternatively, the Administrative Procedure Act, 5 U.S.C. §§ 701 06 (“APA”).

2. On April 26, 2017, President Trump signed Executive Order Number 13792, Review of Designations under the Antiquities Act, 82 Fed. Reg. 20,429 (Apr. 26, 2017) (“Exec. Order 13792”). Exec. Order 13792 directs the Interior Department to review every national monument designated since 1996 that is larger than 100,000 acres, along with any other

monument that Secretary Zinke deems should be reviewed. Under the terms of Exec. Order

13792, the Interior Department conducted a review of 27 national monuments. As a result of that review, Secretary Zinke recommended that President Trump reduce the size of at least three national monuments: Cascade Siskiyou National Monument in Oregon, and Bears Ears National Monument and Grand Staircase Escalante National Monument in Utah.

3. Exec. Order 13792 is widely expected to trigger dramatic changes in monument protections or boundaries to accommodate extractive interests like coal, oil and gas, livestock grazing, and logging. Secretary Zinke made his final recommendations to President Trump on August 24, 2017.

4. The Center submitted two FOIA requests to the Interior Department on April 6, 2017: one seeking the communication records of Secretary Zinke (“Zinke Communications FOIA Request”), and the other seeking Secretary Zinke’s schedules (“Zinke Schedules FOIA Request”). As of the date of this filing, the Interior Department still has not provided any determination or records responsive to the Center’s FOIA requests, which the Interior Department received 106 workdays ago.

5. On May 5, 2017, the Interior Department started a public comment process on the 27 national monuments that are currently under review pursuant to Exec. Order 13792.

6. On May 8, 2017, the Center submitted a FOIA request to the Interior Department seeking from January 20, 2017, to the date of the agency’s search records that mention national monuments designated since 1996 and records that reference Exec. Order 13792 (“National Monuments FOIA Request”). The Center still has not received any determination or records responsive to this FOIA request, which the Interior Department received 84 workdays ago.

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7. On July 5, 2017, the Center submitted a FOIA request to the Interior Department seeking records concerning Secretary Zinke's visit and the Interior Department's review of national monuments in Nevada, including: (1) records mentioning Senator Dean Heller (R Nev) and/or any of his staff visiting Gold Butte National Monument in place of Interior Department staff on June 1, 2017; (2) records mentioning a visit between any Interior Department staff and Carol Bundy; (3) records mentioning Secretary Zinke's meeting(s) with officials from Nye and Lincoln counties in Pahrump, Nevada on June 26, 2017, including but not limited to any discussion related to Basin and Range National Monument; and (4) records mentioning Secretary Zinke's visit to Gold Butte and Basin and Range National Monuments ("Nevada National Monuments FOIA Request"). The Center still has not received any determination or records responsive to this FOIA request, which the Interior Department received 44 workdays ago.

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8. The Interior Department's refusal to release the communication records and schedules of its secretary, and its failure to provide Interior Department records generated in connection with its review of national monument designations, undermines FOIA's policy of government transparency.

9. The Interior Department is unlawfully withholding public records, which the Center requested pursuant to FOIA, by failing to conduct an adequate search for responsive records and by failing to provide the Center with responsive records, for which there are no applicable FOIA exemptions. Prompt access to these records is necessary to effectuate FOIA's purpose, thus the Center seeks declaratory relief establishing that the Interior Department violated FOIA, or alternatively, the APA. The Center also seeks injunctive relief directing the Interior Department to conduct a search for responsive records and provide the Center with all responsive records without any further delay.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

11. Venue properly vests in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district and because a portion of the responsive records may be found in this district.

12. Declaratory relief is appropriate under 28 U.S.C. § 2201.

13. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

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14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non profit conservation organization with offices throughout the United States. The Center has more than 61,000 members. The Center and its members are harmed by the Interior Department's violations of FOIA, or alternatively the APA, as such violations preclude the Center from gaining a full understanding of the activities, priorities, and communications of the Interior Secretary and the Interior Department's review of national monument designations.

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15. Defendant U.S. DEPARTMENT OF THE INTERIOR is a cabinet level agency within the executive branch of the U.S. government. The Interior Department is responsible for protecting and managing much of the nation's wildlife, natural resources, public lands, and cultural heritage. The Interior Department is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f). The Interior

Department is the federal agency responsible for applying and implementing the federal laws and regulations at issue in this complaint.

STATUTORY BACKGROUND

16. FOIA's basic purpose is for government transparency. It establishes the public's right to access all federal agency records unless such records may be withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C. § 552(b)(1) (9).

17. FOIA imposes strict deadlines on federal agencies. Within 20 working days of receiving a FOIA request, an agency must determine whether to disclose responsive records and notify the requester of its determination, and it must then make records "promptly" available unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20 working days, the agency must inform the requester that it has a right to appeal the agency's determination. *Id.* § 552(a)(6)(A)(i).

18. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

19. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

20. First, an agency may toll the 20 working day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

21. Second, an agency may extend the 20 working day deadline for an additional 10 working days only by giving a written notice to the requester that sets forth "unusual circumstances" to justify a deadline extension, and also providing the date by which the agency

expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

22. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C) (D).

23. FOIA requires federal agencies to expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

24. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus it created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, must be narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

25. U.S. district courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

26. Alternatively, an agency’s response to a FOIA request is subject to judicial review under the APA, which confers a right of judicial review on any person who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is

unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

Zinke Communications FOIA Request

27. On April 6, 2017, the Center submitted a FOIA request via electronic mail to the Interior Department. In its FOIA request, the Center sought all of Secretary Zinke’s communication records, “including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by . . . Secretary of the Interior Ryan Zinke . . . from any and all agency and [Interior Department] servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to and/or from Mr. Zinke, with the exception of any records that are or will be publicly available (e.g., through regulations.gov).” The Center made it clear that it is “not requesting the actual email addresses utilized by Mr. Zinke in the course of his official duties, but only the correspondence sent to and from his email addresses.”

28. The Interior Department acknowledged the request the same day it was sent and assigned it tracking number OS 2017 00413 (“Zinke Communications FOIA Request”). The Interior Department said that it needed to “search for and collect requested records from field facilities or other establishments that are separate from the office processing the request” and took a 10 workday extension, citing the Interior Department’s regulations at 43 C.F.R. § 2.19. It also assigned the request to the “complex” processing track pursuant to 43 C.F.R. § 2.15.

29. After receiving no further communication regarding the Zinke Communications FOIA Request, on July 17, 2017, the Center sent a letter notifying the Interior Department that it

had violated FOIA's mandatory determination deadline and requesting an estimated date of completion for a determination on this FOIA request. The Center also offered to assist the Interior Department in processing the Center's request and stressed that it sought a "cooperative approach" with the agency. As of the filing of this complaint, the Interior Department has not acknowledged receipt of this letter.

30. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any "unusual circumstances" that actually prevent it from complying with FOIA's deadline for a determination, or (3) provided a date by which it will make a determination on the Center's FOIA request. *Id.* § 552(a)(6)(A) (B).

31. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the Center's FOIA request. 5 U.S.C. § 552(b). Deleted: Requests

32. Upon information and belief, the Interior Department has failed to conduct a search for responsive records.

33. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions that may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

34. The Center has been required to expend resources to prosecute this action.

Zinke Schedules FOIA Request

35. On April 6, 2017, the Center sent a FOIA request to the Interior Department seeking "all schedules, including but not limited to travel and/or meeting schedules" of Secretary Zinke. The Interior Department acknowledged the request the same day it was sent and assigned

it tracking number OS 2017 00414 (“Zinke Schedules FOIA Request”). The Interior Department said it needed to “search for and collect requested records from field facilities or other establishments that are separate from the office processing the request” and took a ten workday extension, citing the Interior Department’s regulations at 43 C.F.R. § 2.19. It also assigned the request to the “complex” processing track pursuant to 43 C.F.R. § 2.15.

36. After receiving no further communication from the Interior Department regarding the Zinke Schedules FOIA Request, on July 17, 2017, the Center sent a letter notifying the Interior Department that it had violated FOIA’s mandatory determination deadline and requesting an estimated date of completion for a determination on the FOIA request. The Center also offered to assist the Interior Department in processing the Center’s request and stressed that it sought a “cooperative approach” with the agency. As of the filing of this lawsuit, the Interior Department has not acknowledged its receipt of this letter.

37. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any “unusual circumstances” that actually prevent it from complying with FOIA’s deadline for a determination, or (3) provided a date by which it expects to make a determination on the Center’s FOIA request. *Id.* § 552(a)(6)(A) (B).

38. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to the Center’s FOIA request. *Id.* § 552(b). Deleted: Request

39. Upon information and belief, the Interior Department has failed to conduct a search for responsive records.

40. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions which may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

41. The Center has been required to expend resources to prosecute this action.

National Monuments FOIA Request

42. On May 8, 2017, the Center sent a request for records to the Interior Department, also pursuant to FOIA, seeking “[a]ll records . . . that mention, include, or reference national monument designations made by any President of the United States since January 1, 1996,” and “[a]ll records mentioning, including, or referencing [Exec. Order 13792]” from January 20, 2017 to the date of the search for responsive records.

43. The Interior Department acknowledged the request on May 9, 2017, and assigned it tracking number OS 2017 00540 (“National Monuments FOIA Request”). The Interior Department said it needed to “search for and collect requested records from field facilities or other establishments that are separate from the office processing the request” and took a ten workday extension, citing the Interior Department’s regulations at 43 C.F.R. § 2.19. It also assigned the request to the “complex” processing track pursuant to 43 C.F.R. § 2.15.

44. After receiving no further communication from the Interior Department regarding the National Monuments FOIA Request, on July 17, 2017, the Center sent a letter notifying the Interior Department that it had violated FOIA’s mandatory determination deadline and requesting an estimated date of completion for a determination on the FOIA request. The Center also offered to assist the Interior Department in processing the Center’s request and stressed that it sought a “cooperative approach” with the agency. As of the filing of this lawsuit, the Interior Department has not acknowledged its receipt of this letter.

45. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any “unusual circumstances” that actually prevent it from complying with FOIA’s deadline for a determination, or (3) provided a date by which it expects to make a determination on the Center’s FOIA request. *Id.* § 552(a)(6)(A) (B).

46. None of FOIA’s nine exemptions to the statute’s disclosure mandate apply to the records that are responsive to the Center’s FOIA request. *Id.* § 552(b).

47. Upon information and belief, the Interior Department has failed to conduct a search for responsive records.

48. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions which may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

49. The Center has been required to expend resources to prosecute this action.

Nevada National Monuments FOIA Request

50. On July 5, 2017, the Center sent a request to the Interior Department pursuant to FOIA seeking records concerning Secretary Zinke’s review of national monuments in Nevada, including: (1) records mentioning Senator Dean Heller (R Nev) and/or any of his staff visiting Gold Butte National Monument in place of Interior Department staff on June 1, 2017; (2) records mentioning a visit between any Interior Department staff and Carol Bundy; (3) records mentioning Secretary Zinke’s meeting(s) with officials from Nye and Lincoln counties in Pahrump, Nevada on June 26, 2017, including but not limited to any discussion related to Basin

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and Range National Monument; and (4) records mentioning Secretary Zinke's visit to Gold Butte and Basin and Range National Monuments.

51. The Interior Department sent an email to the Center requesting clarification on July 6, 2017. Specifically, the Interior Department requested that the Center "furnish specific names of no more than 2 3 [Interior Department] personnel regarding only Items #1 and #2 of [the] FOIA request so that we can move forward with processing." Following a series of emails and a phone conversation between Interior Department FOIA staff and the Center on July 11, 2017, the Center provided the requested information to the Interior Department and the Interior Department confirmed that it received the necessary information from the Center.

52. On July 13, 2017, the Interior Department sent an email containing a formal letter acknowledging the request and assigning it tracking number OS 2017 00793 ("Nevada National Monuments FOIA Request").

53. As of the filing of this complaint, the Center has received no determination, records, or any further communications from the Interior Department. The Interior Department has not (1) requested additional information from the Center, (2) notified the Center of any "unusual circumstances" that actually prevent it from complying with FOIA's deadline for a determination, or (3) provided a date by which it expects to make a determination on the Center's FOIA request. *Id.* § 552(a)(6)(A) (B).

54. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the Center's FOIA request. *Id.* § 552(b).

55. Upon information and belief, the Interior Department failed to conduct a search for responsive records.

56. The Interior Department failed to provide the Center with reasonably segregable portions of the requested records after deletion of any portions which may be lawfully withheld from disclosure under any FOIA exemption(s). *Id.*

57. The Center has been required to expend resources to prosecute this action.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Missed FOIA's Mandatory Determination Deadline for the Center's FOIA Requests

58. Plaintiff re alleges and incorporates by reference the allegations made in all preceding paragraphs.

59. The Center has a statutory right to a lawful final determination from the Interior Department, within the statutory deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

60. The Interior Department has violated the Center's rights in this regard by failing to provide a lawful determination on all of the following FOIA requests:

- a. Zinke Communications FOIA Request, number OS 2017 00413;
- b. Zinke Schedules FOIA Request, number OS 2017 00414; Deleted: and
- c. National Monuments FOIA Request, number OS 2017 00540; and
- d. Nevada National Monuments FOIA Request, number OS 2017 00793.

61. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

62. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's mandatory determination deadline and disclosure provisions as it has in this case.

63. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Failed to Conduct an Adequate Search for Records Responsive to the Center's FOIA Requests

64. Plaintiff re alleges and incorporates by reference the allegations made in all preceding paragraphs.

65. The Center has a statutory right to have the Interior Department process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). The Interior Department violated the Center's rights in this regard when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to the following FOIA requests:

- a. Zinke Communications FOIA Request, number OS 2017 00413;
- b. Zinke Schedules FOIA Request, number OS 2017 00414; Deleted: and
- c. National Monuments FOIA Request, number OS 2017 00540; and
- d. Nevada National Monuments FOIA Request, number OS 2017 00793.

66. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

67. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA requests.

68. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Failed to Promptly Disclose Records Responsive to
the Center's FOIA Requests

69. Plaintiff re alleges and incorporates by reference the allegations made in all preceding paragraphs.

70. The Center has a statutory right to the Interior Department's prompt disclosure of records following a determination on its FOIA requests. 5 U.S.C. § 552(a)(4)(B); 43 C.F.R. § 2.12.

71. The Interior Department violated FOIA and the Interior Department's own FOIA Regulations by failing to promptly disclose records that are responsive to the following FOIA Requests:

- a. Zinke Communications FOIA Request, number OS 2017 00413;
- b. Zinke Schedules FOIA Request, number OS 2017 00414; Deleted: and
- c. National Monuments FOIA Request, number OS 2017 00540; and
- d. Nevada National Monuments FOIA Request, number OS 2017 00793.

72. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

73. The Center's organizational activities will be adversely affected if the Interior Department continues to violate FOIA's disclosure provisions as it has in this case.

74. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

The Interior Department Failed to Provide Reasonably Segregable Portions of
Any Lawfully Exempt Records

75. Plaintiff re alleges and incorporates by reference the allegations made in all preceding paragraphs.

76. The Center has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

77. The Interior Department violated the Center's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the following FOIA requests:

- a. Zinke Communications FOIA Request, number OS 2017 00413;
- b. Zinke Schedules FOIA Request, number OS 2017 00414; Deleted: and
- c. National Monuments FOIA Request, number OS 2017 00540; and
- d. Nevada National Monuments FOIA Request, number OS 2017 00793.

78. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to the Interior Department in the foreseeable future.

79. The Center's organizational activities will be adversely affected if the Interior Department is allowed to continue violating FOIA's disclosure provisions as it has in this case.

80. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, the Interior Department will continue to violate the Center's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claims)

The Interior Department Unlawfully Withheld or Unreasonably Delayed Actions
That FOIA Requires

81. Plaintiff re alleges and incorporates by reference the allegations made in all preceding paragraphs.

82. The Interior Department unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the Center's FOIA requests, (3) promptly disclose records that are responsive to the Center's FOIA requests, and (4) provide the Center with reasonably segregable portions of responsive records to the Center FOIA requests in the event that records may be subject to an exemption. The Interior Department's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

83. Alternatively, the Interior Department unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the Center's FOIA requests, (3) promptly disclose records that are responsive to the Center's FOIA requests, and (4) provide the Center with reasonably segregable portions of responsive records to the Center FOIA requests in the event that records may be

subject to an exemption. The Interior Department's failures constitute agency action unreasonably delayed and therefore actionable pursuant to the APA, 5 U.S.C. § 706(1).

84. As alleged above, the Interior Department's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

85. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

86. The Center has no other adequate remedy at law to redress the violations noted above.

87. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fifth Claims)

The Interior Department's Violations of FOIA's Requirements Are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

88. Plaintiff re alleges and incorporates by reference the allegations made in all preceding paragraphs.

89. The Interior Department violated FOIA's statutory mandates due to its failure and refusal because it failed to: (1) provide a timely determination on the Center's FOIA requests, (2) conduct an adequate search for records that are responsive to the Center's FOIA requests, (3) promptly disclose records that are responsive to the Center's FOIA requests, and (4) provide the Center with reasonably segregable portions of responsive records to the Center's FOIA requests in the event that records may be subject to an exemption. By repeatedly violating FOIA's statutory

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mandates, the Interior Department's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore are actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

90. As alleged above, the Interior Department's repeated failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

91. The Center has suffered a legal wrong as a result of the Interior Department's failure to comply with the mandates of FOIA. As alleged above, the Interior Department violated its statutory duties under the APA and injured the Center's interests in public oversight of governmental operations.

92. The Center has no other adequate remedy at law to redress the violations noted above.

93. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to provide a determination on Plaintiff's FOIA requests as required by FOIA.

2. Order Defendant to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's FOIA Requests numbers OS 2017 00413, OS 2017 00414, OS 2017 540, and OS 2017 00793 with the cut off date for such searches being the date the searches are conducted, and to provide Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

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3. Declare that Defendant's failures to undertake a search for and promptly disclose to Plaintiff all records that are responsive to Plaintiff's FOIA Requests, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

4. Declare that Defendant's failure to make a timely determination on Plaintiff's FOIA Requests is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2)(A).

5. Declare that Defendant's failure to provide Plaintiff with reasonably segregable portions of records which may be lawfully subject to a FOIA exemption, as alleged above, is unlawful under FOIA, U.S.C. § 552(a)(7)(b), or in the alternative, is agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or is arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

6. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

7. Grant such other and further relief as the Court may deem just and proper.

DATED: September 6, 2017

Respectfully submitted

/s/ Margaret E. Townsend
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